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BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C.

AUG 2 1999

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

MM Docket No. 99-24
RM-9675

IN THE MATTER OF
AMENDMENT OF SECTION 73.202(b)
TABLE OF ALLOTMENTS,
FM BROADCAST STATIONS
(THORNDALE, TEXAS)

To: The Chief, Allocations Branch

MOTION FOR STAY OF PROCEEDINGS

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SUMMARY

This is a request for a stay of proceedings filed by Cameron Broadcasting Company ("Cameron Broadcasting"). Cameron Broadcasting seeks to stay the effectiveness of Notice of Proposed Rule Making, DA 99-1292, released July 2, 1999 in MM Docket No. 99-243, RM-9675 ("NPRM").

The instant case meets the four-part test for obtaining a stay:

- (1) The NPRM is in direct conflict with Cameron Broadcasting's existing construction permit. Cameron Broadcasting's original channel has already been deleted from the Commission's database. Allowing parties to comment in connection with the NPRM will only further injure Cameron Broadcasting. Therefore, Cameron Broadcasting has established the likelihood that it will be irreparably harmed absent a stay;
- (2) Already third parties have taken action based on the grant of the Cameron Broadcasting construction permit and the deletion of its former channel. This would only be made worse if the NPRM is allowed to proceed. Therefore, Cameron Broadcasting has shown that others will be harmed unless a stay is granted;
- (3) The Allocations Branch has no authority to release an NPRM that is in direct conflict with an existing construction permit. Moreover, the issuance of the NPRM was based on the erroneous assumption that no noncommercial channels are available to the petitioner. That has been demonstrated to be false. Therefore, Cameron Broadcasting has shown the likelihood of success on the merits; and
- (4) The public interest is best served in the instant case by the orderly management of the spectrum and the just conduct of the Commission's administrative procedures. Those interests will only be served by the grant of a stay in the instant case. Therefore, Cameron Broadcasting has shown that the public interest will be served by a stay.

In view of the above, a stay of the NPRM is appropriate.

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MM Docket No. 99-243
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To: The Chief, Allocations Branch

MOTION FOR STAY OF PROCEEDINGS

Cameron Broadcasting Company ("Cameron Broadcasting"), permittee of KHTZ(FM), Cameron, Texas, by counsel, pursuant to 47 CFR §1.45 respectfully submits its *Motion for Stay of Proceedings*, seeking to stay the effectiveness of Notice of Proposed Rule Making, DA 99-1292, released July 2, 1999 in MM Docket No. 99-243, RM-9675 ("NPRM"). In support thereof, the following is stated:

I. INTRODUCTION

1. On March 12, 1999, the Commission granted a one-step application to Cameron Broadcasting to upgrade its facilities at Cameron, Texas from Channel 232A to Channel 286C3. On April 16, 1999, Houston Christian Broadcasters, Inc. ("HCBI") filed a Petition for Reconsideration of that action with the Mass Media Bureau. As of this date, however, the Commission has taken no action on the HCBI Petition and, therefore, Cameron Broadcasting continues to hold a valid construction permit for Channel 286C3 at Cameron, Texas.

2. On July 2, 1999, the Allocations Branch released the NPRM. The allotment of Channel 286A at Thorndale, Texas, as proposed in the NPRM, is mutually exclusive with Cameron Broadcasting's existing construction permit. Therefore, Cameron Broadcasting is simultaneously filing a Petition for Reconsideration of the NPRM. In accordance with Amendment of Section 1.420(f) of the Commission's Rules Concerning Automatic Stays of Certain Allotment Orders, 11 FCC Rcd 9501 (1996), Cameron Broadcasting hereby requests that the Commission stay the effectiveness of the NPRM until such time as the Mass Media Bureau resolves all of the issues involving the mutually exclusive proposal contained in the NPRM.

II. ARGUMENT

3. The four factors considered in determining whether or not a stay is warranted are: (1) the likelihood that the moving party will be irreparably harmed absent a stay; (2) the prospect that others will be harmed if the court grants the stay; (3) the likelihood that the party seeking the stay will prevail on the merits of the appeal; and (4) the public interest in granting the stay. Virginia Petroleum Jobbers Ass'n v. Federal Power Commission, 259 F. 2d 921, 925 (DC Cir. 1958). Applying those factors to the present case, Cameron Broadcasting submit that a stay is indeed warranted.

A. Irreparable Harm

4. Absent a stay of the NPRM, the FM radio spectrum involving the communities at or around Cameron and Thorndale, Texas will irreparably damaged. As demonstrated in Cameron Broadcasting's Petition for

Reconsideration, Cameron Broadcasting's original frequency (Channel 232A) has already been deleted from the Commission's database. Already one party, May Broadcasting, Inc. ("May Broadcasting"), has filed a one-step upgrade application based on that deletion which has been accepted for tender. That application precludes Cameron Broadcasting from using Channel 232A.

5. Unless the NPRM is stayed, additional parties may file expressions of interest in this proceeding, notwithstanding Cameron Broadcasting's mutually exclusive construction permit. Any such expression of interest could irreparably change the spectrum and will directly harm Cameron Broadcasting's ability to ever construct its FM station, since it is quite possible that no available channels will remain at the conclusion of the proceeding.

6. The Commission should not invite comments or additional expressions of interest in connection with radio spectrum that is mutually exclusive with an existing FM construction permit. To do so will irreparably harm Cameron Broadcasting and/or other parties who take action based upon this error. Therefore, given the grave likelihood of irreparable injury, the NPRM should be stayed.

B. Harm to Others

7. Staying the NPRM will not cause harm to any other party. At most, interested parties, including HCBI will have ample opportunity to participate in whatever proceeding takes place after the Mass Media Bureau resolves the matters before it on reconsideration. Indeed, HCBI cannot claim any harm at all since it was HCBI itself that filed for reconsideration before the Mass Media

Bureau. Having taken that step, HCBI should be required to await the orderly outcome of that proceeding.

8. Parties responding to the NPRM will be harmed to the extent that the Commission eventually dismisses the proceeding. Moreover, their comments, if any, will be far more meaningful once the matter before the Mass Media Bureau is resolved. To hold the proceeding open for comments at this point, while reconsideration is still pending before the Mass Media Bureau on Cameron Broadcasting's mutually exclusive construction permit, could well be a pointless exercise. Therefore, the NPRM should be stayed pending the outcome of the reconsideration proceeding before the Mass Media Bureau.

C. Likelihood of Success

9. As demonstrated in the Petition for Reconsideration, the NPRM contains several mistaken assumptions. Most significantly, the Allocations Branch did not take into account that fact that the proposal contained in the NPRM is mutually exclusive with Cameron Broadcasting's existing construction permit. The Allocations Branch cannot issue an NPRM that is mutually exclusive with an existing construction permit.

10. The NPRM is further based on the substantial error that HCBI submitted a valid claim for reservation of a commercial channel for noncommercial use. A long line of Commission cases hold that a petition seeking such a reservation cannot be accepted for rule making where a viable noncommercial channel is available for use at the underlying community. Here, Channel 211A is clearly available for noncommercial use at Thorndale, Texas. Moreover, Commission precedent also holds that reservation will not be allowed

where the community is already well served by noncommercial stations. In the present case, there are at least two FM station that provide a 60 dBu or better signal to Thorndale.

11. In view of the above, the NPRM is in conflict with an existing construction permit. Moreover, the HCBI petition should never have been accepted for rule making. Therefore, based on the facts and law, it is most likely that Cameron Broadcasting will succeed on the merits in this case.

D. Public Interest

12. It does not serve the public interest to open a proceeding for comment when that proceeding is in direct conflict with a matter pending before another branch of the Commission. Nor does it serve the public interest to create a schism in the spectrum by permitting parties to file comments or expressions of interest that conflict with the upgrade applications of other parties.

13. In the present case, the orderly management of the spectrum dictates that the NPRM be stayed until the HCBI reconsideration is fully resolved. If, as is most likely, the HCBI petition is found to be unacceptable for rulemaking, the NPRM can be rescinded without harm to the parties or the spectrum. On the other hand, unless the NPRM is stayed, the public interest in the orderly management of the spectrum and just conduct of the Commission's proceedings will be seriously undermined.

III. CONCLUSION

14. Cameron Broadcasting has met all of the relevant criteria for obtaining a stay of the NPRM. Already, the inconsistent actions of the

Commission have resulted in irreparable changes to the FM radio spectrum. To allow the NPRM to proceed would only cause further instability to the spectrum and harm Cameron Broadcasting, as well as third parties. Therefore, the NPRM should be stayed pending the final resolution of the issues before the Mass Media Bureau.

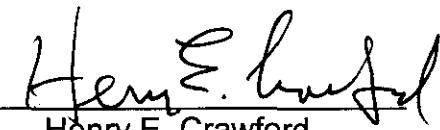
WHEREFORE, Cameron Broadcasting Company respectfully requests a stay of the effectiveness of Notice of Proposed Rule Making, DA 99-1292, released July 2, 1999 in MM Docket No. 99-243, RM-9675.

August 2, 1999

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Respectfully Submitted,

Cameron Broadcasting Company

By: 
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Its Attorney

CERTIFICATE OF SERVICE

I, Henry E. Crawford, do hereby certify that copies of the foregoing Motion for Stay of Proceedings have been served by United States mail, postage prepaid this 2nd day of August, 1999 upon the following:

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